IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19195 of 2006

Date of decision 8.5.2007

Subhash Chand Singla .. petitioner

Versus

The Punjab State Cooperative Supply and Marketing Federation Ltd. and another

.. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Ms.Jagdeep Bains, Advocate for the petitioner

Mr. Govind Goel, Advocate for the respondent

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for issuance of directions to the respondents to release the amount of gratuity of the petitioner which has been withheld on the ground that a case under Section 7/13 of Prevention of Corruption Act,1988 has been registered against the petitioner on 22.6.2005 whereas the petitioner was retired on 30.6.2005. The claim of the respondents is that under rule 2.2(c) of the Punjab Civil Services Rules, Volume II (for brevity 'the Rules') it is entitled to withhold the amount of gratuity if criminal case is registered against an employee before his retirement. In that regard, the respondents have placed reliance on Rule 2.2 (c)(i) of the Rules, which are concededly applicable to the employees of the respondent. Rule 2.2(c)(i) read with

explanation to Rule 2.2(b) reads as under:

> " 2.2(c)(i) Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement or if he was under suspension on the date of retirement upto the date immediately proceeding to the date on which he was placed under suspension' but no gratuity or death cum retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon."
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> " 2.2(b)..... Explanation.- For the purpose of this rule-
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> a) a departmental proceeding shall be deemed to be instituted or the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and
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> (b) a judicial proceeding shall be deemed to be institute--
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> i) in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made; and
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> ii) in the case of a civil proceedings, on the date of presentation

of the plaint in the Court."

A perusal of the afore-mentioned rules show that where a departmental or judicial proceeding is instituted under clause (b) of Rule 2.2 of the Rules no gratuity or death cum retirement gratuity is payable to such an employee till the conclusion of such proceedings and passing of final orders. The Explanation further makes clear that criminal proceedings are deemed to be instituted only on the presentation of challan. It is conceded position that on 30.6.2005 no challan was presented and therefore it cannot be concluded that any criminal proceedings on the date of retirement of the petitioner were pending. Mere registration of an FIR against the petitioner would not constitute a valid ground for withholding the amount of gratuity payable to the petitioner. For the afore-mentioned proposition we also draw support from a judgement of the Hon'ble Supreme Court in the case of UOI v. K.V.Jankiraman AIR 1991 SC 2010. In para 6 their Lordships have observed as under:

> " The promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge sheet has already been issued to the employee."

In view of the afore-mentioned legal position as provided by Rule 2.2(c) read with Explanation to Rule 2.2(b) of the Rules, judicial precedents and the principles we are of the view that the writ petition deserved to be allowed. Accordingly, a writ of mandamus is issued to the respondents commanding them to release the amount of gratuity or any other retiral benefits which are due to him within a period of two months

from the date of receipt of copy of this order.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

8.5.2007
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